

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR HENNEPIN COUNTY

In the Matter of the Revenue Recapture
Act Appeal of Joy L. Robinette

Findings of Fact
Conclusions of Law
and Recommendation

The above-entitled matter came on for hearing at 1:30 p.m. at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota 55401, before Administrative Law Judge Steve M. Mihalchick. Michael Jube, Legal Advice Center, 821 Marquette Avenue, Suite 414, Minneapolis, Minnesota 55402, appeared on behalf of the Appellant, Joy L. Robinette. Ann Tekautz, Revenue Recapture Coordinator, and Doris Grady appeared on behalf of the Hennepin County Medical Center (HCMC or "Claiming Agency"). HCMC's address is P.O. Box 1238, Minneapolis, Minnesota 55440.

Based on all the proceedings, files, and records herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On February 19, 1991, at approximately 3:00 p.m., Joy Robinette went to the urgent care ward of HCMC. She was suffering from flu symptoms and an ear infection and was seeking treatment for the ear condition. While at the urgent care, Robinette experienced dizziness. Due to the dizziness, the attending nurse sent blood and urine samples to the laboratory for tests. In Exhibit 12, the Cumulative Laboratory Report indicates the testing was done for "dizzy - evaluation." The nurse attending to Robinette transferred her to the emergency room for further treatment. Robinette told the nurse that, since Robinette was uninsured, she did not want extensive testing or treatment. Robinette was admitted to the emergency room at about 3:55 p.m. At approximately 4:45 p.m., chest X-rays were taken. However, the HCMC staff was concerned about possible cardiac problems and Robinette ultimately agreed to the tests.
2. Robinette was first seen by a resident in the HCMC emergency room at approximately 5:05 p.m. The X-rays, blood tests, and urine tests were taken to determine if there was some underlying cause to Robinette's dizziness and low blood pressure (although that was a normal condition for Robinette).
3. After concluding the examinations and tests, Septra, an antibiotic, was prescribed. Robinette left HCMC at approximately 6:30 p.m. Over the next several days, Robinette's condition worsened. A concerned relative took Robinette to Fairview South to be examined. The examining physician concluded that Robinette was reacting to the Septra and

substituted Amoxicillin, a different antibiotic. Robinette responded immediately to the new medication and she returned to work two days later.

4. On March 1, 1991, HCMC billed Robinette \$441.50 for the treatment she received. That total breaks down as follows:

Emergency Room Examination	\$120.00
Emergency Room IV	67.00
Lab-Panel 1	43.00
Lab-CBCW/3 C Diff	31.90
Rad Stat Chest 2 View	134.00
Lab ER Stat Pregnancy	24.30
Lab ER Stat Urinalysis	21.30

Exhibit 1, at 2 (labelled page 1 in document).

5. Robinette responded to the bill with a letter to HCMC complaining of the treatment provided, the conditions under which she was treated, the procedures which were conducted without her knowledge or consent, and the outcome of the treatment. Exhibit 3.

6. In response to Robinette's letter, HCMC sent her a letter saying that the treatment she received was appropriate. Exhibit 4. The letter also indicated that the transfer to the emergency room was the result of "abnormal blood pressure and heart rate." Id. The letter concluded that it was "unfortunate" that Robinette suffered additional symptoms. Id.

7. Robinette refused to pay HCMC's bill. After several months of unsuccessful collection efforts, her account was placed with a collection agency. In June, 1991, Robinette moved from her apartment at 800 West 106th Street in Bloomington, Minnesota, to an apartment in Columbia Heights. In November, 1991, Robinette moved into her house at 7309 Brunswick, Brooklyn Park, Minnesota. She has resided at that location since November, 1991. Robinette never received any billings or requests for payment after 1991.

8. On May 1, 1994, HCMC sent a computer tape to the Department of Revenue listing all the accounts for which revenue recapture was sought. Exhibit 1. Sometime after May 1, 1994, but no later than May 31, 1994, HCMC mailed out a letter to inform persons on the computer tape that a revenue recapture action was being initiated. Id. The exact date on which the letter to Robinette was sent is unknown. The contents of the letter is unknown because no copy of the form was placed in evidence at the hearing.

9. The notice letter was returned to HCMC on August 23, 1994. Exhibit 1. The letter was returned due to Robinette having moved. The letter was addressed to Robinette at the Bloomington address. HCMC made no attempt to obtain Robinette's current address from the Commissioner of Revenue or any other source. The Commissioner of Revenue had Robinette's current address throughout the year.

10. The first notice Robinette received that revenue recapture was sought against her tax refund came in September, 1994. At that time, Robinette received the statement from the Commissioner of Revenue sent in place of Robinette's tax refund check. The statement informed Robinette that her refund of \$390.00 had been sent to HCMC and gave the work alias and telephone number of a person at HCMC to call for information.

11. On September 23, 1994, HCMC received \$390.00 from the Department of Revenue that had been recaptured from Robinette. That amount was credited to her account, leaving a balance of \$51.50. Exhibit 1.

12. On September 26, 1994, Robinette contacted the person identified in the Commissioner of Revenue's statement and was told that the bill was correct and that her only option was to write a letter to HCMC explaining her side of the dispute. The person told Robinette that there was no appeal right. Robinette sent a letter explaining her position to HCMC. She also sought additional advice on the matter from the Minnesota Attorney General. The Attorney General responded with a letter detailing the appeal rights available under the Revenue Recapture Act. Exhibit 12.

13. Immediately after receiving the Attorney General's letter, Robinette telephoned HCMC and complained about how her matter was being handled. The summary of the telephone conversation includes the following:

She has filed a protest through the state somehow.

Exhibit 11.

14. On January 3, 1995, HCMC served a notice of hearing for this matter. The notice scheduled the hearing in this matter for February 3, 1995.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Hennepin County Board have jurisdiction of this matter pursuant to Minn. Stat. §§ 270A.08-.09 and 14.50.

2. Minn. Stat. § 270A.08, subd. 1, sets out the requirements for notice under the Revenue Recapture Act. That subdivision states:

Not later than five days after the claimant agency has sent notification to the department pursuant to section 270A.07, subd. 1, the claimant agency shall send a written notification to the debtor asserting the right of the claimant agency to the refund or any part thereof. If the notice is returned to the claimant agency as

undeliverable, or the claimant agency has reason to believe the debtor did not receive the notice, the claimant agency shall obtain the current address of the debtor from the commissioner and resend the corrected notice.

3. HCMC failed to give notice of the proposed revenue recapture withing five days of referring the account to the Commissioner of Revenue as required by Minn. Stat. § 270A.08, subd. 1.

4. HCMC failed to comply with Minn. Stat. § 270A.08, subd. 1, when its notice letter was returned for the lack of a current address. HCMC did not contact the Commissioner of Revenue to obtain Robinette's current address.

5. Minn. Rules 1400.8603(C) and 1400.8608 place the burden of proof on the claimant agency in Revenue Recapture Act hearings. Minn. Rule 1400.8608 places the burden of proof for affirmative defenses on the debtor.

6. HCMC has shown by a preponderance of the evidence that it has a valid claim against Robinette for emergency room services. While Robinette did not feel she needed the additional tests at first, she did have symptoms of concern to the medical staff and ultimately agreed to the further tests.

Based on the foregoing Conclusions, and for the reasons set forth in the following Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED THAT:

The appeal of Joy Robinette of the revenue recapture for services rendered by HCMC on February 19, 1991, be GRANTED, that HCMC be required to return the amount of \$390.00 recaptured to Joy Robinette, and that any further recapture be cancelled.

Dated: February _____, 1995.

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Taped, No Transcript Prepared.

NOTICE

Notice is hereby given that, pursuant to Minn. Stat. § 14.61 the final decision of the Hennepin County Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Board. Exceptions to this Report, if any shall be filed with Board at A-2400 Government Center, 300 South Sixth Street, Minneapolis, Minnesota 55487.

Pursuant to Minn. Stat. § 14.61, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

MEMORANDUM

Under Minn.Stat. § 270A.08, subd. 2(b), debtors in revenue recapture actions are entitled to challenge the procedure used by a claimant agency and the merits of the underlying debt. Robinette has asserted that she did not consent to the services provided and questions the propriety of those services. But she was displaying dizziness, low blood pressure, and rapid pulse; obviously possible symptoms of cardiac distress. She testified that she reluctantly agreed to the further tests. The bill was justified.

HCMC has availed itself of the Revenue Recapture Act to obtain payment on delinquent bills. However, the procedural protections afforded debtors under that statute have been wilfully ignored by HCMC. Notice prior to the recapture is required under Minn. Stat. § 270A.08, subd. 1. The claimant agency is afforded a grace period of five days after the account is transferred to the Commissioner of Revenue to mail that notice. HCMC indicated at the hearing that, due to the volume of accounts transferred, it routinely sends out the notices throughout the month after sending a computer tape of claims to the Department. HCMC retains no specific information on the date each individual notice is mailed. Thus, HCMC has failed to meet its burden to show the original notice was properly served in this case.

Even if the first notice letter was properly served, the institutional treatment of returned notices would render service improper in this case. HCMC received the letter by return mail for an incorrect address. Minn. Stat. § 270A.08, subd. 1, requires HCMC to obtain the current address from the Commissioner of Revenue. A staff member testifying on behalf of HCMC at

the hearing in this matter stated that “due to volume we just can’t.” There is no exemption from the due process requirements of Minn. Stat. Ch. 270A for volume. The benefit HCMC receives from revenue recapture is great. With that benefit comes the responsibility to comply with all the statutory requirements.

Even after the debtor became aware of her hearing right in this matter, HCMC continued to deny her that right. The memorandum of Robinette’s telephone call to HCMC contains a sentence strongly indicating that the collection staff are unaware of the debtor’s right to a hearing. HCMC’s complete failure to comply with the procedural requirements of Minn. Stat. Ch. 270A compels granting Robinette’s appeal in this matter.

S.M.M.